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MINUTES

OF HIS HIGHNESS THE MAHARAJA OF DURBANGHA

AND OF THE HON'BLE KRISTODAS PAL

DISSENTING FROM THE

REPORT OF THE MAJORITY OF THE SELECT COMMITTEE

ON THE

BENGAL TENANCY BILL.

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CALCUTTA:

PRINTED AND PUBLISHED BY WOOMESH CHUNDER NUNDI,
AT THE "HINDOO PATRIOT" PRESS, 108, BARANUSSY GHOSE'S STREET.

1884.

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BENGAL TENANCY BILL.

DISSENT.

I DISSENT from the report of the majority of the Select Committee on the Bengal Tenancy Bill.

The Committee commenced their sittings from the 21st November 1883 and concluded their labours on the 13th March 1884. They first met twice a week and the members were required to give 48 hours' notice of amendments to be moved by them. From the 26th January the Committee resolved to sit thrice a week from 2 P. M. to 5-30 P. M., and notices of amendments were required to be sent in to the Secretary the day before the meeting, and the amendments were circulated on the morning of the meeting. The new arrangement was proposed owing to the amount of work which remained undone, and also owing to the near approach of the Simla season, but I cannot refrain from remarking that, apart from personal inconvenience which it necessarily involved, it left the members scant time, scarcely ten hours for the preparation of amendments and six hours for their study, even if one gave his whole time to this work. I considered it my duty to protest against the arrangement, as it was neither fair to the individual members of the Committee, particularly to one in my position, being deprived of the opportunity of consulting those whose views I was understood to represent, nor to the momentous interests involved, but my protest was of no avail. The Committee certainly gave their best attention under the circumstances mentioned to the matters before them, and, as far as I was concerned, shewed me the utmost courtesy and consideration, but there was an unavoidable haste in disposing of momentous questions at the last moment, which could not but be regretted.

I wish the Rules of the Council had permitted the Committee to examine witnesses on practical questions connected with the Bill. The Committee I doubt not felt the necessity of this power. At the suggestion of His Honor the Lieutenant-Governor the Committee in an informal way examined some experienced zemindars on the subject of sub-letting.

The Bill has undergone material alterations at the hands of the Committee, but its cardinal principles remain unchanged. In some respects the position of the zemindars has been made worse than what it was in the original Bill. On some minor points even-handed justice has been done to both the zemindar and the ryot. The middleman of course gains much more than what he has under the existing law, but the *bona-fide* cultivator, in whose behalf the greatest anxiety was evinced in the Committee, will, I fear, be practically worse off than he is at present. I do not now wish to discuss the whole Bill, and will not therefore enter into details on these points.

My objections to the Bill have been principally based on these grounds, 1stly, because it goes against the ancient and existing land-law of the country, taking away on the one hand and conferring on the other rights which are inconsistent with that law; 2ndly, because it assumes a construction of the Regulations, which is opposed to judicial decisions, and takes for granted statements and facts not supported by evidence; 3rdly, because it does not fulfil the primary object for which it was originally

sought, viz., the simplification of the procedure for the settlement and realization of rent; 4thly, because it is calculated to sow dispute and dissension between the landlord and the tenant and flood the land with litigation to the detriment of the peace and welfare of the agricultural community; 5thly, because it will tend to reduce a large proportion of cultivating ryots into agricultural day-labourers; and 6thly because by abolishing the freedom of contract between the landlord and the tenant, and by making the court and the revenue officer the referee and arbiter in all matters of zemindari management and ryoti action, it will neutralize the vital principle of self-reliance in the agricultural population and destroy its back-bone, hamper the free operation of economic laws, and stereotype the patriarchal phase of Government with the aggravating evil of litigation at almost every step. These objections, which I took when the Bill was introduced last year, have not, I am sorry to say, been removed by the alterations made by the Select Committee.

In specifying my objections to the Bill I do not propose to discuss it chapter by chapter or to traverse all its details. I propose to confine myself to the leading principles of the Bill and a few principal details.

TENURE-HOLDERS.

In additition to the present class of persons, who are recognised as tenure-holders, two other classes have been introduced, viz., (1) occupancy ryots who may sublet more than half their holdings (sec. 37), and (2) ryots, the area of whose holdings may exceed 100 standard bighas, the whole or part of which is sublet; in this case the tenant will be presumed to be a tenure-holder unless the contrary is shown (sec. 5, sub-sec. 5). In the case of the first-mentioned person, who is called a converted tenure-holder, all the incidents of the status of a tenure-holder will hold good except his liability to enhancement of rent. A tenant of the last-mentioned class will be entitled to all the rights and privileges of a tenure-holder. With regard to the first, I cannot understand with what justice is an occupancy ryot exempted from his obligations under the Bill as to pre-emption and distraint, and the zemindar in so far placed in a worse position, because the occupancy ryot chooses to sublet more than half his holding. The conversion of an occupancy ryot of a holding, the area of which exceeds 100 bighas, into a tenure-holder, is, in my opinion, still more arbitrary. The status of a tenure-holder carries certain privileges, which the occupancy ryot does not possess, and for which generally a valuable consideration is paid to the zemindar. For instance, a tenure is not unfrequently a permanent holding, heritable and transferable according to conditions of contract, and under the present Bill will enjoy favoured rates of rent, and will be exempt from the rules of pre-emption and distraint. Surely, it cannot be contended that the conversion of the 100 bigha jotedar into tenure-holder under an edict of the legislature is consistent with the ancient or existing land law of the country. In so far, it is a direct encroachment upon the rights of the proprietory class.

Then as to enhancement of rent of tenure-holders, section 8 of Reg. V of 1812 contained the following rule as to the rate at which auction purchasers might collect :—"In the case of a dependant talukdar, if the rent of the lands be computed according to the rates payable by ryots or cultivators for land of a similar quality and description, a deduction shall be allowed from the gross rent in the adjustment of the jumma of such dependant taluk at the rate of 10 per cent., for the talukdar's profit or income over and above a reasonable allowance for charges of collection according to the extent of the taluk." This section was repealed by Act X of 1859, which, however, contains no rule as to the grounds or limits of enhancement of the rent of tenure-holders and under-

tenure-holders. But under case-law the rent may be enhanced up to the limit of the prevailing rate payable by the holders of similar tenures in the neighbourhood, or where no such prevailing rate is easily ascertainable, up to such a limit as shall not exceed 10 per centum of the collections after deducting the expenses of collection. *Vide Field's Digest.* This case-law has been embodied in the present Bill, but with wide variations. For instance "customary rate" has been substituted for "prevailing rate," though the former is less easily ascertainable than the latter. Under the case-law the margin left to the tenure-holder as profit was not to *exceed* 10 per cent of the collections, but under the Bill it is to be *not less than* 10 per cent of the balance which may remain after deducting not from the collections, which I take to be actual collections, but from the gross rents, not only the expenses but also "risks of collection." I may observe, I am not aware of any revenue law under which an allowance is made for "risks of collection." Even the zemindars are not allowed any percentage for sums irrecoverable from ryots on account of the Public Works and Road Cesses, though the liability is not their own, and though they collect the money for Government without any remuneration. It will be thus seen in what advantageous position is the tenure-holder placed under the present Bill compared with his position under the existing law. But this is not all. Under the existing law the rent of a tenure-holder is liable to be enhanced to any reasonable amount, but under the Bill the enhanced rent is not to be more than double the previous rent; under the existing law the enhanced rent is to be paid at once, but under the Bill the court may direct that the enhancement shall be gradual and payable in 5 years; under the existing law, there is no limit of period as to enhancement of rent, but under the Bill the period is limited to 10 years. I allude to the last three provisions to show that while so little consideration has been shown to the zemindar, who is the proprietor of the land, and who is responsible for Government revenue under the stern sun-set law, so much tenderness has been shown to the tenure-holder who is generally looked upon as an idle factor. Surely this is not the way to discourage sub-letting.

RYOTS AT FIXED RATES.

For the first time a legal presumption was introduced by Act X of 1859 to the effect that if the rent of a ryot had not been changed for a period of 20 years before the commencement of a suit, it shall be presumed that the land has been held at that rent from the date of the Permanent Settlement. Whatever the necessity of such a provision at the time of passing Act X of 1859, that necessity, it cannot be denied, no longer exists. The ryots have advanced in intelligence and independence, and the practice of granting printed rent-receipts has become common in many parts of the country. They do not, therefore, now stand in need of the same measure of protection against enhancement, which was considered necessary in 1859. On the contrary, the effect of this provision has been disastrous to the zemindar. The Hon'ble Mr. Reynolds drew attention to this point in his memorandum on the Bill of the Rent Commission. He quoted several opinions showing that the law has thrown "an unfair burden of proof upon the zemindar," and that "it bears very hardly upon auction purchasers who are often unable to get possession of the Zemindari papers of their predecessors." This, Mr. Reynolds observes, is forcibly represented by the Collector of Purneah, who believes that "there is hardly an estate in whole of Bengal in which the value of the proprietory right has not suffered from this presumption." Without entirely abolishing the presumption Mr. Reynolds recommended that its operation should be confined to cases in which uniform payment could be proved for twenty years before the period when the presumption was first introduced into the law. He proposed a further concession in favour of auction purchasers by providing that the presumption shall not be pleaded against them. In making

these recommendations Mr. Reynolds remarked, "In determining the principle upon which the Legislature should act, it would seem that the main point to be considered is the practical effect of the presumption which was introduced into the Act of 1859 Has this presumption generally operated to defeat an unjust claim on the part of the landlord, or to maintain the tenant in a status to which he was not rightfully entitled It is believed that to this question there can be only one answer. In the great majority of the cases in which the presumption has been successfully pleaded, it has had the effect of conferring upon tenants, whose holdings really originated subsequently to 1793, a privilege which was intended to be confined to those who had held from the date of the Permanent Settlement If this is really the case, it does not seem inequitable that the rule should be modified in the manner which has now been suggested"

Mr. Reynolds, I am sorry to say, has since changed his opinion, but the validity and justice of his opinion remain all the same. Relying upon it, I moved the amendment of the law to the effect originally proposed by Mr. Reynolds, but neither my motion nor a very much modified proposal to allow the 20 years to count from before the date of the passing of the present Bill was accepted by the majority of the Committee. The Bill thus describes the incidents of holding at fixed rates:

Section 23. A raiyat holding at a fixed rent or rate of rent—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as a tenure-holder, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is under the terms of contract between him and his landlord, liable to be ejected.

Coupling this provision with the twenty years' presumption referred to I cannot resist the conviction that it will tempt ryots, whether entitled to the presumption or not, to declare themselves to be ryots at fixed rates, and thus defraud the zemindar of his just rights, who, if he be strong enough to assert them, must go through an expensive and harassing process of litigation to do so.

The intention of the Legislature in introducing this law of presumption was to protect ryots holding from the date of the Permanent Settlement from arbitrary enhancement of rent by unscrupulous zemindars, but the continuance of this provision will, I fear, have the effect of converting by a side-wind every occupancy ryot into a *mukararidar* or permanent tenure-holder. The consequence of this provision to good and bad zemindars is also striking Where a zemindar from a dislike of litigation, forbearance, or sympathy, has not enhanced the rent of a ryot for more than twenty years, the ryot, who has been careful enough to preserve his rent-receipts, will easily prove his case, while a zemindar, who has shewn no such consideration or leniency, who has not scrupled to trouble and harass the ryot with periodic enhancement, will necessarily have a decided advantage. The result will be that the good zemindar will suffer, and the bad zemindar will gain

OCCUPANCY RYOTS.

THE occupancy ryot of the modern time is notoriously a creature of Act X of 1859, but I do not wish to revive the controversy on the subject. The 12 years' rule has been in existence for more than a quarter of a century, and it cannot be fair or just to disturb it now. The only fault found with the present law on the subject is that if a zemindar were so disposed he could defeat the growth of the occupancy right by shifting the ryot from field to field. This practice, it is admitted, is not known in Bengal. But the Secretary

of State, whilst strongly expressing himself in favour of the present 12 years' rule of continuous possession, has recommended the following modification. He would provide that "every resident ryot shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident ryot shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years." I do not at all subscribe to the equitableness of this provision. I do not think that it is fair or just that a squatter, because allowed to hold land in one part of an estate for 12 years, should *ipso facto*, be entitled to hold land in all other parts of the estate as an occupancy or privileged ryot. If in any part of the country the zemindar has sought to nullify the growth of occpuancy right by shifting the ryot from one plot of land to another, he has, it cannot be denied, acted within the law, and it would be as unreasonable to suppose that he has acted wrongly as to suppose that a tradesman is wrong in suing his debtor before the time, which would, under the law of limitations, bar his claim. As for preventing shifting, if it should be deemed absolutely necessary, I would have preferred to punish such an act by imposing a heavy penalty. But the Committee ruled that the Right Hon'ble the Secretary of State for India having finally decided the question, they were not competent to reopen it, but I cannot help remarking that the Committee have gone further than the area covered by the Secretary of State's decision. The original Bill contained the following provisions regarding the acquisition of the status of a settled ryot:

Section 45. Every person who, for a period of twelve years, whether before or after the commencement of this Act, has continuously held, as a raiyat, raiyati land situate in any village or estate, shall, notwithstanding any contract to the contrary, and though the land so held by him at different times during that period may have been different, be deemed to become, on the expiration of that period, a settled raiyat of that village or estate.

Again:

Section 47. Every settled raiyat of a village or estate holding after the second day of March, 1883, as a raiyat, any raiyati land comprised in that village or estate shall, notwithstanding any contract to the contrary, be deemed to acquire or have acquired in that land a right of occupancy under the law for the time being in force.

At the instance of the Bengal Government the Committee have greatly extended the theory of the settled ryot and created a new legal presumption in his favour. Thus:

Section 25. (1) Every settled raiyat of a village or estate shall have a right of occupancy in all land held by him as a raiyat in that village or estate.

(2) Every person who, being a settled raiyat of a village or estate, held land as a raiyat in that village or estate at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force.

Section 26. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village or estate, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village or estate.

(2) If, in any proceeding under this Act, it is proved or admitted that a person holds land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section until the contrary is proved or admitted, that he has for twelve years held the land or some part of it as a raiyat.

(3) A person shall be deemed, for the purposes of this section, to have held land continuously in a village or estate, notwithstanding that the particular land held by him has been different at different times.

(4) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(5) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(6) A person shall continue to be a settled raiyat of a village or estate as long as he holds any land as a raiyat in that village or estate and for one year thereafter

(7) If a raiyat recovers possession of land under section 96, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession for more than a year.

These provisions, I submit, are wholly outside the decision of the Secretary of State. That authority would in no case reduce the period of occupation from 12 years as provided in section 25, sub-section (2), nor did he recommend any legal presumption that every ryot shall be considered a settled ryot with right of occupancy unless proved to the contrary. The Secretary of State, it would be observed, would recognise a "resident ryot" as an occupancy ryot, but the provisions quoted above do not recognise *residence* as a condition of accrual of occupancy right. In the second place the Secretary of State does not refer to possession by two or more co-sharers as a proof of occupancy right derived by each such co-sharer. In the third place, he does not say that even if a settled ryot leaves his holding and pays no rent, he shall be considered a settled ryot "for one year thereafter." On the contrary he declares payment of rent as an inalienable condition of the right. And lastly the Secretary of State nowhere says that if a ryot once abandons a holding and afterwards recovers possession by payment of compensation, he shall be deemed to have continued to be a settled ryot notwithstanding his being out of possession for more than a year. All these proposals, I repeat, are outside the sanction of the Secretary of State, and as a matter of course are so many encroachments upon the proprietory rights of the zemindar.

It is observable that while a person holding land as a ryot shall not be prevented from acquiring an occupancy right in the land by reason that he is jointly interested in the land as proprietor or tenure-holder, and a person, though an *ijardar* or farmer, shall not lose his right of occupancy in any land which he may subsequently hold in farm, it is declared that if the landlord acquires an occupancy holding, the occupancy right shall cease to exist (sec 28). On what principle is this right denied to the landlord and conceded to the tenure-holder, who may be a permanent holder, and to the farmer, is not clear to me. It does seem strange and incomprehensible that the zemindar alone shall not be allowed to enjoy the ordinary rights of a purchaser, simply because he happens to be a zemindar

On this point I venture to draw attention to the following remarks of Mr. H. L Dampier, Senior Member of the Board of Revenue, deservedly regarded as a high fiscal authority in Bengal. He says: "It will be open to the whole world, with one exception only, to acquire by purchase or otherwise and to continue to hold certain rights described as occupancy rights in a given piece of land. Such rights may be acquired and held by distant non-agricultural capitalists, by the zemindars of estates adjoining that within which the land lies; by the zemindars, resident or absentee, of the estate itself, if the land is included in a tenure, by any non-resident holders of tenures, whether in the estate itself or in any other estate, by the very holders of tenures above the lowest under-tenure which includes the land. The one person who is debarred from holding this right, even if he acquires it by purchase from the person in whom it last vested, is 'the landlord,' that is, by the definition the "person or number of persons immediately under whom a tenant holds;" or, according to the proposal made by the Lieutenant-Governor towards the end of paragraph 14, the "proprietor or permanent tenure-holder immediately under whom the raiyat holds." The justice of these remarks is so evident that I need say nothing by way of comment

TRANSFER OF OCCUPANCY HOLDING AND PRE-EMPTION.

THE question of transferability of the occupancy holding has been discussed threadbare. I will not therefore repeat the arguments against it, which are already so well known. Suffice it to say that the measure will be equally injurious both to the zemindars and the ryots; the former will have a valuable right unjustly taken away from them and be exposed to the intrusion of hostile persons into their estates, and the latter, under their peculiar circumstances, will, at no distant time be reduced to the status of day-labourers by being sold out of their holdings, on which they depend for their subsistence. Neither under the Permanent Settlement Regulations nor under Act X of 1859 is an occupancy holding transferable. When the question of the transferability of the occupancy holding was first proposed by the Government of Bengal, the Government of India expressed its disapproval of it. The British Indian Association was invited to express its opinion on the subject, and it agreed to the legalization of the sale of the occupancy holding in satisfaction of decree for rent and suggested that where a zemindar might adopt this remedy, an occupancy holding once so sold should be declared to have become a transferable tenure. The Lieutenant-Governor of the day practically adopted the suggestion. In a letter to the Government of India, dated the 2nd February 1878, Mr. Secretary Reynolds wrote:

"The Lieutenant-Governor has with some reluctance withdrawn the proposal that the occupancy right shall be generally transferable by private sale or other agreement. The weight of opinion is in favour of this proposal, as will be seen by a reference to the letter of the Board of Revenue and His Honor is satisfied that such transfers would not have the bad effect which has been sometimes apprehended, and that they would not tend to transfer the land to classes whose ownership it might not be thought desirable to encourage. He believes that such a right of transfer would be much to the benefit of landholder and ryot. It appears, however, that the landlord class are strongly opposed to the concession of any general right of transfer, and the Governor-General in Council has expressed serious doubts as to the expediency of including such a provision in the Bill. The Bill, therefore, only proposes to recognize sales of occupancy tenures at the request of the landlord in execution of decrees of court, and to this the Lieutenant-Governor believes that no objection will be made."

The Bengal Government has since changed its opinion on the subject and the concession made by the zemindars in 1878 necessarily goes for nothing. In the present Bill the transferability of the occupancy holding is made general and absolute, subject to a rule of pre-emption. There is nothing in the Bill to prevent greedy land-jobbers or speculators from trafficking in land at the expense of the zemindars. As to right of pre-emption accorded to the zemindar, it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zemindar will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and if he cannot come to an agreement with the ryot about the price, he must go through the expensive process of a reference to the court for arbitrement, and must be prepared to pay the price adjudged by the court. If the ryots of a zemindar in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up. Practically, therefore, this recognition of the transferability of the occupancy holding may be worked by evil-disposed ryots to the utter ruin of the zemindar. It is noteworthy that while the zemindar will have to go through the expensive process of obtaining the court's decision as to price, the ryot shall not be bound by that decision, for section 32, sub-section 4, says that when the zemindar tenders a price to the ryot, "the ryot shall either abstain from selling the land or sell

it to the landlord at that price." So the landlord will be entirely at the mercy of the ryot.

Shadowy as the right of pre-emption will practically be, the amended Bill contrives to keep out of the purview of this provision all substantial ryots, for under it the rule of pre-emption will not apply to tenure-holders, and all occupancy ryots who may sublet more than half their holdings, or who may keep holdings of more than 100 bighas in size part of which is sublet, are, *ipso facto*, converted into tenure-holders.

ENHANCEMENT OF RENT.

I have already alluded to the question of the enhancement of the rent of tenure-holders, who are placed at a considerable advantage to the detriment of the zemindar a position which they had never before enjoyed under the Permanent Settlement Regulations or under Act X of 1859. With regard to the enhancement of the rent of occupancy ryots I wish to point out that at present the enhancement law has come to a dead-lock, and that one of the chief objects of fresh legislation is admitted to be to afford relief to the zemindars in this matter, but I am of opinion that the alterations made by the Committee will tend more to maintain the *status quo* than to secure justice to the landlord In the first place under the existing law there is a perfect freedom of contract between the landlord and the tenant regarding enhancement of rent outside the court, but under the Bill this freedom is entirely taken away, and it is provided that where the arrangement may be voluntary, the enhancement shall not exceed more than 4 annas in the rupee, that is to say, not more than 2 annas for a term of at least seven years, and if more than 2 annas, but not more than 4 annas in the rupee, for a term of at least 15 years. Thus a serious disability is imposed upon the landlord in fixing rent outside the court When enhancement of rent is sought by suit the grounds on which the enhancement may be applied for are thus set forth

(*a*) That the rate of rent paid by the raiyat is below the prevailing rate payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity.

(*b*) That there has been a rise in the average prices of staple food crops in the locality or at the usual markets.

(*c*) That the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord.

(*d*) That the productive powers of the land held by the raiyat have been increased by fluvial action.

I am not prepared to say that the revised grounds will materially help the solution of the problem of enhancement. The first ground, "prevailing rate" is not made clear, and the same doubts and uncertainties that now hang round it remain unremoved. An attempt was made to explain it, but it was opposed by the Bengal Government The second ground will, I am afraid, prove fictitious, for knowing as the Committee do, how unreliable are the price-lists, prepared by Government officers, they cannot deny it will be difficult to obtain reliable data for striking average prices, particularly, "in the locality or at the usual markets"—who is to fix the usual markets? The third ground will be made practically inoperative by the conditions which follow. As for the fourth ground, even if it be fairly worked, its application will be exceptional

The rules providing for enhancement enquiries by the revenue officer will practically leave the whole matter to the discretion of the Revenue Officer. For instance in ascertaining the prevailing rate the Revenue Officer is directed to make a local enquiry, but he is not told on what principle he is to find the prevailing rate, and

the result will be diversity of practice under diverse officers. In working out enhancement on the ground of rise in prices it is provided that—

(*a*) The court shall have regard to the lists of prices periodically published under the authority of the Local Government, and shall compare the average prices during the quinquennial period immediately preceding the institution of the suit with the average prices during such other quinquennial period as it may appear equitable and practical to take for comparison.

(*b*) The Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

(*c*) Subject as aforesaid, and subject also to section 48, the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last quinquennial period bear to the average prices during the previous quinquennial period taken for purposes of comparison.

In carrying out the above provisions much will depend upon the price-lists, and, as I have already stated, those that are published in the *Calcutta Gazette* by Government are wholly unreliable. They are collected by the police, who cannot be expected to be over-scrutinous. They are not tested by any responsible agency, not to say that the wholesale and retail prices being generally mixed up, no fair average can be based upon them. Unless special care be taken to prepare the lists—and this remark applies to future lists—they cannot and ought not to be accepted by courts of justice as good and valid evidence. The question still recurs—how will the lists of past prices be prepared ?

It will be observed that the value of all crops must be reduced to the price of paddy in Bengal and that of Indian corn, barley and wheat in Behar. The specification of the staple food-crops is left to the discretion of the local Government, which may from time to time vary them. No allowance is made for valuable crops such as tobacco, sugarcane, mulberry, potato, jute &c. This rule is evidently founded on the principle of the Tithes Commutation Act of the United Kingdom. There is, however, I venture to submit, no fair analogy between tithes in England and rents in Bengal; for the former represented a fixed share or a tenth part of the crop, while the latter, though originally based on a share of the produce, have now greatly receded from the old standard. An English tithe is not susceptible of enhancement, whereas the Bengal money-rent is legally declared to be liable to enhancement. The question, therefore, arises whether the principle, which is held equitable in the commutation of tithes, would be fair and equitable in the enhancement of a money-rent. As far as I can judge, the difficulties in carrying out the principle will by no means be less than what they are under the existing law. As for enhancement on the ground of landlord's improvement, it is so much handicapped by restrictive conditions, that it will I fear prove an economic anomaly. After enumerating the circumstances which the Court should take into consideration in ordering enhancement on this ground, Section 46 says that the Court shall consider the ability of the land to bear a higher rent. With such an uncertainty hanging over him will any proprietor with two grains of common sense to rub against one another undertake any improvement ?—if he cannot be sure of any return for his money, naturally, he wont lay out money. There are two other points connected with this subject. It was settled in previous correspondence between the Government of Bengal and the British Indian Association that enhancement of rent in any case should not be more than double the present rent, and that every enhancement of rent shall have a currency of 10 years. These rules were embodied in the original draft Bill, but, at the instance of the present Bengal Government, both the rules have been altered It is now declared that, when enhancement is sought on the ground of prevailing rate, the

rent shall not exceed the previous rent by more than 8annas in the rupee or 50 per cent., and that, when it is sought on the ground of rise in prices, the enhanced rent shall not exceed the previous rent by more than 4 annas in the rupee or 25 per cent., and that every enhancement shall have a currency of 15 years. It would be thus seen that there is no finality in the decision of Government, and that the more is conceded by the zemindars the more is demanded from them.

It is observable that where the enhancement is sought on the ground of the present rent being below the "prevailing rate," common sense suggests that the rent should be raised to the limit of the "prevailing rate"—it is not clear why a maximum limit of fifty per cent. should be fixed in such a case. Again, where the enhancement is sought on the ground of rise in prices, and the increase is to be given according to the rule of proportion, it is not equitable that there should be again a maximum limit of 25 per cent.

COMMUTATION OF PRODUCE RENTS INTO MONEY PAYMENTS.

This part of the Bill affects Behar more than Bengal, and as my honourable colleague, His Highness the Maharaja of Durbhanga, will doubtless comment upon it, I need not say much upon it. I may, however, observe that the principle upon which the commutation is directed to be made, *viz.*, (*a*) the average money-rent payable by occupancy ryots for land of a similar description and with similar advantages in the vicinity, and (*b*) the average value of the rent actually received by the landlord during the preceding 10 years, will tend to lower the present rents. I should add, that when the Bill was introduced, a distinct assurance was given that the present rents will not be lowered.

NON-OCCUPANCY RYOTS.

Both under the Permanent Settlement Regulations and Act X of 1859 it was left entirely to the discretion of the landlord to deal with the non-occupancy ryot, who is none other than the tenant-at-will. But the relations between the landlord and non-occupancy ryot are materially altered by this Bill. Nothing will prevent the non-occupancy ryot from acquiring the occupancy right, and, as already observed, he will get the benefit of the legal presumption of a settled ryot, if he can manage to scatter a few seeds once upon a plot of ground, then when he will be first let in he will be liable to pay such rent as may be agreed on between himself and his landlord, but no enhancement will be allowed except by registered agreement, and even when an agreement may be tendered by the landlord to the ryot, the latter may refuse it, and the former will then be driven to the necessity of instituting a suit to eject him. The court shall then determine what rent is fair and equitable for the holding, and if the ryot agrees to pay the rent so determined, the landlord, under order of court, shall be bound to give him a lease for 5 years, and if before the termination of the lease the ryot shall have acquired a right of occupancy, he will be entitled to all the rights and privileges of an occupancy ryot. The non-occupancy ryot will thus be one in name; the landlord's present right to deal with him at his discretion is entirely taken away, while the freedom of contract is disallowed and the landlord is compelled to give a judicial lease for 5 years. I should observe that in consequence of the introduction of the judicial lease, the original provisions regarding compensation for disturbance have been omitted. These provisions embodied a new-fangled idea not known in this country, and would, if retained, have proved a new apple of discord. But the substitution of the judicial lease for 5 years involves a great injustice to the landlord, who is tied hand and foot by the court in a matter in which he has always enjoyed perfect independence of action. The ryot

in whose favour the judicial lease is ordered, may be most obstreperous and turbulent, may by his bad advice be tainting the whole flock around him, and may thus prove most mischievous, not to say that the landlord, if he settles the land with another ryot, may get better rent and perhaps better security for payment of rent. But the judicial lease will give him no such option or advantage. I cannot help thinking that the provisions relating to non-occupancy ryots involve a further invasion of the proprietory rights of the landlord, and that in favor of a class of tenants, who are not attached to the soil, and have therefore no manner of moral claim upon the consideration of the landlord.

SUB-LETTING AND SUB-RYOTS.

ONE principal defect of the Bill, as introduced, was that, while it seriously curtailed the rights and privileges of the zemindar it did practically little for the good of the *bona-fide* cultivator, whose labour constituted the wealth of the country and fed a whole host of proprietors and sub-proprietors including the Government, as the representative of the public. The position of the middle-man had been greatly strengthened, while the sub-ryots, usually the actual cultivators of the soil, were left to the tender mercies of the middlemen. The invidiousness of this condition was fully realised by the Committee, and they proposed various devices for bettering the position of the sub-ryots. Accordingly, restrictions have been proposed in the Bill on sub-letting, but I doubt whether these provisions will work. In the first place, if an occupancy ryot sublets more than half his holding, he shall on registration of the same be converted into a tenure-holder. Considering the decidedly advantageous position of the tenure-holder, this will operate as a premium on sub-letting instead of as a repressive measure. In the second place, if an occupancy ryot sublets, his sublease shall not be valid for a term exceeding seven years, and this provision will have a retrospective effect. Surely this will be no loss to the sub-lessor, for the shorter the lease, the greater his gain. In the third place, the landlord of a sub-ryot shall not, in the case of a registered lease, be entitled to recover rent more than 50 per cent of what he himself pays and in any other case not more than 25 per cent. I do not understand how this rule will work, where there is a long chain of middlemen, for instance in Backergunge, where there are thirteen grades of middlemen. Will each middleman have the right to claim from his sub-ryot 50 per cent. in excess of what he pays to his own landlord? What would then be the position of the last link in the chain—of the men who immediately cultivates? And in the fourth place, a sub-ryot shall not be liable to be ejected by the landlord except at the end of an agricultural year and after a written notice to quit, to be served not less than six months before the expiration of that year. My own impression is that there will be frequent disputes between the superior ryot and the sub-ryot as to whether the former has sublet more than half his holding, and the result will be either silent suffering on the part of the sub-ryot or frequent litigation. Then, as far as I can judge, the limitation of rent under Section 62 will apply only in such cases in which a superior ryot may sublet more than half his holding; he will, therefore, studiously keep himself under this limit and thus avoid the clutches of the law. Furthermore, it will be nobody's interest to bring to court the superior ryot contravening the law, for no penalty attaches to breach of law. The superior ryot will make it a point not to let his land to any ryot, who will not accept his own terms, and when a sub-ryot accepts those terms, he will not seek the benefit of the law; another ryot, a third party, may wish to get the land on the terms prescribed by law, but he will have no *locus standi*, if

he be not admitted by the superior ryot. So that the new provisions restricting subletting will either prove a dead letter or give rise to endless litigation

IMPROVEMENTS

THE chapter on improvements introduces an alteration in the relations between the landlord and tenant consistent with neither the existing law nor custom At present improvements are generally made by the landlords, and where they are made by tenants, they are effected with the consent and sanction of the landlord, but this chapter declares that (1) where a ryot holds at a fixed rent his landlord shall not be entitled to prevent him from making any improvement in respect of his holding, (2) where a ryot has an occupancy right he shall have the prior right to make the improvement unless it affects another holding or other holdings under the same landlord, and (3) where a non-occupancy ryot desires that certain improvement should be made in his holding, he shall serve a notice on the landlord calling upon him to make the improvement within a reasonable time, and if the landlord is unable or neglects to comply with his request, he may make the improvement himself. The whole theory of these provisions ignore the proprietory right of the landlord and assigns to the Collector the task of deciding as to who has the right to make improvements. If public policy requires that the ryot should be encouraged to make improvements, surely the first option ought to be given to the landlord to effect them. From an economic point of view, the landlord, having larger capital, is in a better position to carry out improvements, but no facilities are offered to him for this purpose Even a return in the shape of increased rent is not assured to him for his outlay of capital on improvements, for it will be in the discretion of the court not to allow an enhancement, if the court thinks that the land cannot bear enhanced rent. The inevitable result of these rules, I am afraid will be to throw back all improvements. The soundness of the policy which expects improvements from those, who have not the means to make them, and to deter those who can, is unintelligible to me. I suggested that facilities should be given to the landlord to acquire land for purposes of agricultural experiments, model-farms, &c., but my proposals were not accepted. I was referred to an amendment of the Land Acquisition Act.

MANAGEMENT OF JOINT ESTATES.

THE Bill gives power to the District Judge, on the application of the Collector or of any person interested, even a squatter, to deprive co-owners of an estate or tenure of the right of management thereof, if it appears to him that there has ensued or is likely to ensue (*a*) inconvenience to the public, or (*b*) injury to private rights. I shall take the last point first. I at once admit that hardships and harrassment may be caused to ryots in consequence of disputes among co-owners and the absence of a common manager, but this point has been met by the Committee in the provisions made for deposit of rent. Section 73, cl. (*c*), says that a tenant may deposit rent when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of these co-sharers for the money, when no person has been empowered to receive rent in their behalf Besides, the co-sharers cannot apply for distraint or sue for enhanced rent unless they make the application or institute the suit jointly or through a common manager. It will be thus seen that the Bill effectually removes all reasonable complaints of ryots who are tenants of joint estates. As for inconvenience to the public from the joint management of estates, I confess, I do not clearly understand it. If, for instance, the co-parceners default in

the payment of revenue, their estates are liable to sale; if they transgress law or fail to comply with public requisitions, their responsibility is easily traceable under the operation of the Bengal Registration Act, and they are liable to punishment. It is not therefore clear why they should be deprived of the management of their own property because the Collector or Judge thinks that it causes "inconvenience to the public." I submit it would be contrary to sound public policy to remove all incentives to exertion and improvement from landed proprietors and capitalists by delegating the management of their property to others on pleas, which have no existence in fact.

RECORD OF RIGHTS, SETTLEMENT OF RENTS,

TABLES OF RATES AND RECORD OF PROPRIETOR'S PRIVATE LANDS.

THE chapters relating to these subjects are doubtless in accordance with the modern ideas of land administration in periodically settled India, but as far as Bengal is concerned, the rights and interests of different parties are generally well defined, and where there might be disputes between landlords and tenants in matters dealt with in these chapters, common sense would suggest that the application of the law should be left to the self-interest of the parties concerned. But the essence of these chapters is that while liberty is accorded to both landlord and tenant to move the machinery provided in them, the Local Government is empowered to bring of its own motion the machinery into action. The application of the provisions contained in these chapters will, I fear, plunge the country into a flood of litigation, stir up the worst passions of both the landlord and the tenant, open a wide door to perjury and forgery, give rise to endless corruption among the subordinate *amlah*, and throw the agricultural population into a sea of trouble, expense and loss. This was the lesson taught by the Revenue Survey. Of course, when the parties will themselves apply for the enforcement of the provisions under notice, it will be their own look-out, but I do not see any good or valid reason why the Government should, without any application from the parties, step in and inflict upon the country the evils pointed out above. The work contemplated cannot, I fear, be accomplished in two or three generations to come, and for all this time will run the festering sore indicated above. If the Record of Rights were confined to those cases in which auction purchasers at revenue or summary sales may not receive *jumma bandi* papers for their guidance, if the Settlement of Rents were made applicable to those cases in which the ryots might combine and withhold payment of rent and agrarian outrages might take place, and if the Record of Proprietor's private lands were limited to those cases in which the proprietor himself made the application, in all these cases on the application of parties, it would be reasonable and fair; but to give the wide scope which has been given in these chapters by vesting the Government with unlimited discretion is not only not warranted by the necessities of the case, but will be followed by evils which will be highly detrimental to the best interests, peace and happiness of the agricultural population. As regards tables of rates, the enquiries which have been made on the subject have made it clear that in most parts of the country they are not practicable, that there are so many variations in rates of rent, sometimes one hundred and odd in a village, owing to various causes, historical, personal, economical and social, that it is hopeless to discover any typical or uniform rate, or what was formerly called *Pergana* rate in any given area. And yet power is taken by the Local Government to order preparation of tables of rates for special areas and to charge landlords and tenants with the cost of this work, though they may not in the least benefit by it. In the same way the expenses which may be incurred by enforcing the provisions relating to

record of rights and settlement of rents, will be cast upon the landlords and tenants, though no application had been made by them. Thus a new cess will be imposed upon the land for purposes of proceedings which may do more harm than good to the landed classes.

As regards the record of proprietor's private lands which go by the name of *khamar*, the definition given is wholly opposed to what is contained in the Permanent Settlement Regulations and excludes all waste lands. Section 138 declares:

Sec. 138. (1) The Revenue-officer shall record as a proprietor's privateland—

(*a*) Land which is proved to have been cultivated as khamar, zeraat, sir, nij, nij jot or kamut by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village custom as proprietor's khamar, zeraat, sir, nij, nij-jote or kamut.

(2). In determining whether any other land ought to be recorded as a proprietor's private land the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, but shall presume that land is not a proprietor's private land until the contrary is shown.

(3). If any question arises in a Civil Court as to whether land is or is not a proprietor's private land the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

Section 37 of Reg. VIII of 1793 thus describes *khamar* lands:—

Section 37. Reg. VIII of 1793. The above Exception (exclusion of lakhiraj lands from the general assessment), however, is not meant to include the *Malikanah* lands in Behar, or the *nankar*, *khamar*, *nijjote*, and other private lands of the Zemindars and independent talukdars, or other actual proprietors of land in Bengal and Midnapore, &c.

It will be seen by comparing the language of the Regulation with that of the Bill that no such condition as cultivation for 12 continuous years was attached to the zemindar's *khamar* lands under the old law. As for waste lands it is notorious that they were given to the zemindar to enable him to recoup the loss, which inevitably fell upon him under the crushing assessment of the Permanent Settlement.

DISTRAINT.

THE law of distraint is generally regarded as an important and potential auxiliary in realising rent. In Behar I understand it is largely resorted to. The essence of the present law of distraint is that the process is a sharp and quick remedy, and that the whole responsibility rests upon the landlord who is liable to heavy penalties in case of abuse of power. Under the Bill distraint is made a process of Court; it is clogged with various restrictions and by the time the order may be executed the crops may be off the field. The procedure is so much elaborated that it will no longer prove the prompt remedy, which the distraint law ought to be, while the expense and harrassment will be such as to compel the landlord to forego it altogether. I am inclined to think that the law of distraint, as provided in the Bill, will remain a dead letter, and thus the only facility which the landlord possesses at present for realising his rent quickly will be taken away from him.

JUDICIAL PROCEDURE.

I NEED not repeat that the Government has over and over promised to simplify the procedure for recovery of rent. It has recognised its obligation in this respect from the time of the Permanent Settlement to this day. One of the primary objects

of the present Bill from its first inception has avowedly been the simplification of the procedure for the realisation of rent, and the Committee in deliberating upon the subject fully admitted it, but the practical result of their deliberations, I am constrained to say, is disappointing. I submitted three schemes on the subject: (1) the Patni Procedure, (2) the Certificate Procedure now applicable to Government and Wards' Estates, and (3) a modification of the present procedure. I set out below the details of the third scheme.

The zamindar or rent-receiver in instituting a suit for arrear of rent should make out a *prima facie* case by filing necessary papers such as *jama-wasil-baki* papers and counterfoils of receipts and giving necessary evidence.

The Court should then issue summons. In order to obviate the usual complaint of non-service of summons I would suggest a provision to the following effect :—

" The summons shall be ordinarily served personally or by a registered postal cover. If for any reason the summons cannot be served personally on the defendant it shall be affixed at his usual place of residence in the village in which the land is situate, or within five miles thereof. The notice may be served by affixing at the mal-kutchery of such land, or on the land for which the arrear is due or other conspicuous place thereon or at the village chauki or chowpal, or at some other conspicuous place in the village in which the land is situate. An attestation of service should be taken from the village chaukidar, village mandle, or some two respectable residents of the village, or rural sub-registrar, as the case may be."

In order to prevent abuse, at least two of the abovementioned processes should be observed in every case ; and with this safe-guard the plea of non-service of summons should not be accepted by the Court as a good ground for re-opening or retrying a case which has been decided *ex parte*.

The summons should contain a notice that unless the defendant appears within one week from date of service, the Court shall pass a decree for the amount claimed and order immediate execution. The Court should be required to examine the defendant within eight days from the date he enters appearance and give notice of the day appointed to the plaintiff. The defendant should be required to file all documentary proofs and bring his witnesses in support of his pleas on the day of his examination. If the nature of the case admits of the immediate disposal of the suit, the Court should do so ; or if the case be contested, it should on that day settle the issues in the presence of both parties and fix another day for hearing and final determination of the suit, not exceeding a fortnight from date of examination of the defendant.

As regards execution, if the defaulter be a tenure-holder or occupancy-raiyat, his tenure or holding should be sold in execution. If he be a non-occupancy-raiyat, he should be evicted.

No appeal should be admitted unless the amount decreed was deposited. The rent-receiver should be allowed to take out the deposit on giving proper security.

This scheme seemed to enlist the sympathy of many of my honourable colleagues in the Committee, but, to my misfortune, the majority have not been able to accept it. They say :

For ourselves we must confess that after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent suits, we are unable to suggest anything of importance in this direction which would not involve a serious risk of failure of justice. In particular, while we are anxious to facilitate the service of summons and the proof of such service, we are unwilling to give any presumption of law against an absent defendant except on adequate proof of such service.

The Committee have, however, introduced the following new provisions :

We have, however, with a view to avoiding, as far as possible, the complication and delay which arise from questions as to the landlord's title being raised in rent suits, made an important amendment in the section (164) which requires a tenant, admitting that rent is due

from him, but pleading that it is due not to the plaintiff but to a third person, to pay the amount into Court. Our object is to force the issue of disputed title to be raised separately and independently of the rent suit, and we have therefore provided that the Court shall, on the money being paid in, cause notice of the payment to be served on the third person, and unless he, within three months, institutes a separate suit against the plaintiff and obtains an order restraining the payment of the money, it will be paid out to the plaintiff on his application.

A much more efficacious remedy, in my humble opinion, would have been, as I pointed out in Committee, to declare forfeiture of right of the ryot in case his disclaimer of the title of his landlord was disproved in court. The modifications proposed by the Committee would only multiply wheel within wheel, a title suit in an arrear suit, and thus vastly delay the realisation of rent instead of facilitating it.

The Committee propose to give power to the High Court to make modifications in the ordinary procedure, if necessary, in applying it to the trial of rent-suits. This, to my mind, is tantamount to shirking the question. Surely the legislature, which has enacted the code of procedure, is competent to modify it for the purpose of expediting the trial of rent-suits.

I do hope that when the Committee meet in November next, they will be able to see their way to an efficacious simplification of the present procedure for the realisation of rent, which is a crying grievance with the landlords, and in consequence of which they are not unfrequently heavy losers in meeting the Government demand of the revenue and the cesses. If there is a consensus of opinion on any one point connected with the rent-law, it is on this, and it would be a scandal if, while the whole law is being overhauled, no substantial aid be given to the landlords to realize their just dues.

FREEDOM OF CONTRACT.

UNDER this Bill, freedom of contract between the landlord and the tenant is practically abolished. The matters which are placed beyond the reach of contract are thus specified by the Committee :—

(*a*) The acquisition of the status of settled raiyat and of the occupancy-right (sections 24, 25 and 26.)

(*b*) The incidents of the occupancy-right specified in section 31.

(*c*) The occupancy-raiyat's right to demand a reduction of rent under section 51.

(*d*) The right of either landlord or tenant to demand a commutation of a produce rent under section 53.

(*e*) The protection afforded by the Bill to a non-occupancy-raiyat or an under-raiyat from ejectment except on specified grounds (sections 58, 59, 60 and 63.)

(*f*) The right of a tenant to a reduction of rent on account of a diminution of the area of his holding (section 66.)

(*g*) The right of a raiyat to make improvements and claim compensation for them (sections 88, 89, 90 and 93.)

(*h*) The protection afforded to all tenants against ejectment except in execution of a decree (section 98.)

I have, in my remarks on the introduction of the Bill, strongly protested against this retrograde move. The Permanent Settlement Regulations not only recognised but openly encouraged freedom of contract, and Act X of 1859 did the same. I cannot conceive that if the ryot can be fairly considered a free agent in mortgaging or selling his hearth and home or his agricultural land, in disposing of the produce of his field, or engaging his labor and fulfilling a thousand other obligations of every-day life, why should he be considered

incompetent to enter into contract with his landlord. I would strongly urge the re-consideration of this question.

CIVIL COURTS AND REVENUE OFFICERS.

THE jurisdiction under the Bill is divided between the Civil Court and the Revenue Officer. The large powers, which have been conferred upon the revenue officer at the instance of the Bengal Government, are, I hope I am mistaken, evidently intended to reduce the land administration of Bengal to the same dead level system, which prevails in Northern India, and which has so notoriously hampered the action of capital and clogged the springs of industry in that part of the country. Whether I refer to the provisions for the commutation of produce rents into money payment, to record of rights and settlement of rents, to preparation of tables of rates, to superintendence of contracts between the landlord and the tenant, the fixing of standard poles for measurement, the preparation of price-lists, or the like, the revenue officer has been made the fulcrum on which no small portion of the structure of the Bill rests. I would not object, if the Revenue Officer were made only an executive or administrative officer, but as he has been vested with judicial functions, the objection becomes serious. Nothing I conceive can be more injurious to the interests of justice than a system which will place a judicial officer at the beck and nod of the Executive Government. On this point I would reproduce the enlightened and wise remarks of Lord Cornwallis contained in the preamble to Reg. II of 1793 :

"All questions between the Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their ryots (tenants), have hitherto been cognisable in the Courts of Maal Adawlut, or Revenue Courts. The collectors of revenue preside in these Courts as judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the department of revenue. The proprietors can never consider the privileges which have been conferred upon them as secure whilst the revenue officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be subjected to the cognisance of courts of judicature, superintended by judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the powers of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landlords by the Regulations can be infringed, or the value of landed property affected. Land must, in conse-

quence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State."

The broad views which were expressed by the Government in 1793 apply with tenfold force in 1884.

PATNI TENURES.

The zemindars not without reason object to the incorporation of the Patni law in this Bill. They hold that every word of that law has during the last sixty-five years received an accepted and authoritative meaning; that it is well understood by the zemindars, the patnidar, the court and the amlah; that to modernise the language will be to disturb the recollections and traditions of more than three scores of years, and that it is therefore highly desirable to leave the Patni law as it is, text and construction, on the principle of letting well alone. I concur in this opinion and would leave out the Patni chapter from this Bill.

I have hastily drawn up my principal objections to the leading principles of the Bill. I have not had time to comment on details. I propose to bring them forward when the Committee meet in November next.

KRISTODAS PAL.

The 14th March, 1884.

DISSENT

OF HIS HIGHNESS THE HON'BLE THE MAHARAJA OF DURBHANGA.

PRINCIPLES OF THE BILL.

I WOULD base my dissent to this Bill on the broad ground that it does not settle the land law of Bengal on a firmer, juster or more satisfactory basis than it now stands on, and that it will neither keep the cultivation of the soil in the hands of a substantial peasantry able to withstand the vicissitudes of seasons, nor tend to promote the accumulation of wealth, the sound growth of credit, and the progress of agricultural improvements; also that while it fails to accomplish the only objects which in Lord Hartington's opinion justified the introduction of such a Bill, it at the same time involves great and entirely novel departures from both the ancient custom and the existing law of Bengal, a course which that very same authority has with the true instinct of statesmanship condemned as unadvisable.

Despatch, 17th August, 1882, paragraph 21.

Despatch, 17th August, 1882, paragraph 9.

I find it difficult to understand what are the principles on which Government proposes to change the present law of landlord and tenant. In the Statement of "Objects and Reasons" (which it is customary to send to the Members of the Council with every Bill) it is stated that Act X of 1859, though admittedly beneficial, was in some important points so unsuccessful that it had resulted in Bihar in rack-renting of raiyats and oppression by zemindars, and in Eastern Bengal in preventing zemindars from obtaining enhancements to which they were legally entitled and even in difficulty in recovering their legal rents. From this we may gather that the main objects of the Bill are to protect raiyats on one hand and on the other to facilitate the zemindars, collection of legal rents and their making legal enhancements of the same.

If it can be shown that the results of Act X of 1859 have really been such as Mr. Ilbert states (which, however, I would, as far as Behar is concerned, most emphatically deny, and which, I would here specially notice, no proof whatever has been shown,) then no landlord or raiyat could oppose equitable measures taken to attain what, as I above notice, appear to be the nominal objects of the proposed Bill, nor do I see that in any of their various memorials the zemindars have raised the slightest objection on these points.

Had the Bill adhered simply to these objects, all would have been well; but departing altogether from them, clauses of the most revolutionary character, and infringing strictly guaranteed rights have been introduced, which have created a great deal of unrest and mistrust in the minds of the zamindars. It is true that the Government of India have never said that they wish to deprive the landlords of their vested rights; on the contrary, they have always declared that they do not wish in any way to trench on the vested rights of landlords that were guaranteed to them at the time of the Permanent Settlement, but the result of the passing of this Bill would be practically to negative such declaration.

No legislation whose object it is to deprive one class of its vested rights (without giving that class any compensation) and to give those rights to another class, has I think,

as yet been passed in India, nor do I think that legislation of this sort is ever likely to be enacted. Some such theories have been advocated by certain advanced thinkers in England, but in India until this Bill appeared no such theories had been heard of, and even in England there is a marked difference of opinion on this point among the most advanced thinkers.

Nowithstanding that the Government of India have, as I before remarked, never officially said that they wish to do away with the Permanent Settlement, and that the Secretary of State in his letter is most distinct in declaring that he is against any legislation that is likely to trench on the vested rights of any class of the community. Notwithstanding this, the proposed Rent Bill has created an amount of ill-feeling and distrust never before excited in India by any Bill affecting the rights of the people, and the cause of such feeling is that, although these professions have been made by Government, still the most of the clauses of the proposed Bill are revolutionary and are directly against the principles on which we are supposed to legislate. The feeling to which I allude has of late been greatly aggravated and intensified by a memorandum that was published by the Government of Bengal on 5th January, 1884. I quote below a passage from this memorandum, and the principles contained in it are, I would suggest, quite enough to create distrust and ill-feeling in the mind of everybody interested in the Bill. The passage runs thus:—

"The Lieutenant-Governor then thought that, while it was well * * * * * to have history on one's side, yet the decision of the question turned more on appeals to the requirements of the present * * * * * than on historical researches. He therefore paid more attention to the practical character of the proposals made in the Bill than to their historical justification."

Apparently overlooking the fact that our rights as zemindars have been clearly defined and legislatively recorded at the time of the Permanent Settlement, the Lieutenant-Governor here implies that our rights, and I suppose the raiyats' rights too, are but indistinct in the haze of historical research, and that in consequence alleged present wants affecting those rights should be met by measures, framed not in accordance with the past guarantees of the Government of India, but in the light of views, held by a present Local Government. On this ground, he has, it would seem, been biased by views formed with regard to what some consider to be present necessities and has disregarded the zemindars' vested rights.

We the zemindars on the other hand hold that we are one of the classes most interested in this Bill, and that our rights naturally should not only be fully enquired into but protected.

It may be thought, though I do not for one moment admit it, that the landlords rights are prejudicial to the interests of the people at large. If so, the matter ought boldly to be faced, and landlords be allowed "compensation for disturbance" and ordered to surrender ther rights. But it is hardly fair to the zemindars that the letter of the Government of Bengal of September last (which it now seems did not exhaustively enter into the question of the landlords' rights, and which had great weight with the deliberations of the Select Committee) should ever have been put forward before that Committee as the result of an impartial enquiry, and that the able minute of the Chief Justice which fully entered into the legal aspects of the question should not have been published with the other official papers.

The zemindars as a body have objected to the Bill ever since it came out of the hands of the Rent Commission. Meetings were held in almost every district of Behar and Bengal, and in all these meetings the revolutionary clauses were condemned, and

it was the general opinion that the Bill was a wanton interference with the existing customs and the ancient land law of the country. Raja Siva Prasad in Council in March last correctly described what are the feelings of the landed proprietors, when he said that, "if such a Bill passes, it will shake the faith and confidence of the people."

Under this head I would only add that the general principles of this Bill, *viz.*, the proposal to invest occupancy-raiyats with these rights in all fresh lands on the very day that such lands are settled with them, the restrictions that are for the first time proposed to be placed on the right of free contract in favour of the raiyats without giving any reciprocal advantage to the zemindar, and the limit of 25 per cent. enhancement that is also for the first time proposed to be placed in a Bill, one of the primary objects of which is to give the landlord further facilities for the enhancement of his rents, can but be looked upon by the zamindars as not only a wanton digression from the recognised laws and customs of the country, but as a confiscation of their vested rights. The Bengal and Bihar zamindars have as a class been the most loyal of Her Majesty's subjects in India and trusting in the known good faith of the English Government they have always believed that no Government of India would wish or think of depriving them of their vested rights or of turning a deaf ear to their representations.

Under these circumstances the zemindars are naturally alarmed at the publication of such an official memorandum by the Bengal Government as that I have above quoted from, one which leads them to believe that the Government of Bengal has not thought fit to make a full enquiry into their rights before committing itself to the opinions expressed in its letter of September last.

I would ask what have the zemindars done to deserve this treatment? Are they really as rapacious and unscrupulous as the Government of Bengal thinks them to be? If so, where are the facts to show it? Have we got any statistics to show that it is the general custom in Bengal for the zemindars to change the lands of the tenants every twelfth year? Are there any statistics to show that the treatment of the non-occupancy raiyats is so very oppressive as to justify the introduction of such an idea as compensation for disturbances in our legislature, an idea which is entirely novel to the people of the country, and which was not even dreamt of by the ancient law-givers? Is there in fact any proof that rack-renting and oppression in Behar is so common, as to call for the destruction of the proprietory rights?

A great number of official opinions have been published, but few or no statistics to show that the conduct of the zemindars is really so oppressive as described in the above-mentioned letter of the Bengal Government. Further I would ask, is there any ancient law to show that according to ancient custom the raiyats had occupancy-rights in all the village lands, and that the zemindar had no proprietary rights in any lands except those that he cultivated himself?

I would now at more length record under different headings those points in connection with the proposed Bill as it left the hands of the Select Committee which lead me to dissent from it.

THE PERMANENT SETTLEMENT.

Throughout the whole of the discussion of the Rent Bill it has always been officially declared that it is not the object of the Government to infringe on any of the rights that were guaranteed to the zemindars or raiyats at the time of the Permanent Settlement. On this point, therefore, the zemindars, the raiyats, and the Government are all at one. The question now to be decided is, what were these

rights? On this point, however, there is a great difference of opinion, though I for one cannot make out how there can possibly be any difference of opinion on a well-defined question of this sort. The wording of the permanent settlement regulations is most clear, and they distinctly declare the zemindars to be the actual "proprietors of the soil" and not mere rent-receivers, as some people seem to imagine.

There are others who go beyond this, and hold that the zemindars as a class did not exist before the time of the Permanent Settlement, and that before this period they were mere collectors of rent for the Government. In answer to these, I enclose for publication translations of two* firmans granted by the Muhamadan Emperors to two of the oldest families in Bihar; one of these was granted to the family of Bhojepur or Doomraon, and the other to the family of Darbhanga; and these clearly show that at least some of the zemindari families of Bihar were in existence not only before the time of the Parmanent Settlement, but even before the establishment of the English Government in any part of India.

As regards the rights conferred on the zemindars by the Permanent Settlement, I cannot do better than quote a passage from the regulation itself. It runs thus:

"The Governor General in Council declares to the zemindars, independent taluqdars, and *other actual proprietors of land*, that no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever. The Governor General trusts that the proprietors of land sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves *in the cultivation of their lands* under the certainty that they will enjoy exclusively the fruit of their own good management and industry. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent taluqdars and raiyats, are duties at all times indispensably required from the proprietors of land, and a strict observance of these duties is more than ever incumbent upon them for the benefits which they will themselves derive from the orders now issued."

Sir John Shore in one of his minutes writes thus:

"I consider the zemindars as proprietors of the soil, to the property of which they succeed by right of inheritance, according to the laws of their own religion, and that the sovereign cannot justly exercise the power of depriving them of the succession nor of altering it when there are any legal heirs; the privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zemindars before we acquired the Dewany."

These are the opinions of Lord Cornwallis and Sir John Shore, the actual framers of the Permanent Settlement, and both of them are emphatic in declaring the zemindars to be the "proprietors of the soil." These opinions, moreover, were endorsed by no less a personage than Pitt. Mr. Dundas, the president of the Board of Control, in a letter to Lord Cornwallis, says:—

"I thought it indispensably necessary that the measure should originate with the Board of Control, and likewise that I should induce Mr. Pitt to become my partner in the final consideration of so important and controverted a measure. He accordingly agreed to shut himself up with me for ten days at Wimbledon and attend to that business only. Charles Grant stayed with us a great part of the time. After a most minute and attentive consideration of the whole subject, I had the satisfaction to find Mr. Pitt entirely of the same opinion with us. We therefore settled a despatch upon the ideas we had framed, and sent it down to the Court of Directors."

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* One firman has not been received from the Hon'ble the Maharaja.

As regards the rights of the raiyats, I might simply mention that the rights that are now proposed to be given to them are very different from those that they enjoyed at the time of the Permanent Settlement. In fact, they had properly speaking no proprietary rights in the land at all. They could not transfer their holdings, nor is there anything in the regulations to show that the raiyats had the right to hold on at fixed rates without the consent of the zamindar. There is besides nothing to show that the rate of rent was regulated by the value of rice, wheat, and some other cheap food crops, which, according to a late declaration of the Secretary of the Bengal Government, are the only "staple crops." I would here quote a passage from Sir John Shore on this subject :—

"It is, however, generally understood that the raiyats by long occupancy acquire a right of possession to the soil, and are not subject to be removed; but this right does not *authorise them to sell or mortgage it, and it is so far distinct from a right of property.* This like all other rights under a despotic Government is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from the raiyats. If we admit the property of the soil to be solely vested in the zemindars, we must exclude any acknowledgment of such rights in favour of the raiyats, except where they may acquire it from the proprietor.

"In every district throughout Bengal, where the license of exaction has not exceeded all rule, the rents of the land are regulated by known rates, and in some districts each village has its own. These rates are formed with respect to the produce of the land at so much per bigha; some lands produce two crops a year, some three; *the more profitable articles, such as mulberry plant, betel-leaf, tobacco, and sugarcane, render the value of the land proportionably great.* These rates must have been fixed upon a measurement of the land, and the settlement of Tury-mul may have furnished the basis of them. In the course of time cesses were superadded to that standard, and became included on a subsequent valuation, the rates varying with each succeeding measurement. When a measurement of the land takes place, the existing rates are confirmed and generally with some additions."

In this passage the definition of staple crops is not limited to rice and wheat and the other cheap food crops; on the other hand, it shows that in those days the value of the more valueable kinds of produce like tobacco and mulberry was taken into consideration.

Before concluding this subject I quote a passage from another high authority who lived immediately after the Permanent Settlement. I refer to Lord Metcalfe, who, as is well known, was no admirer of the Permanent Settlement, as is evident from the passage I quote below, but he also is of the opinion that the zamindars were vested with the proprietory rights in the soil by the Permanent Settlement :—

"I need not say that I am no advocate for the regulation proprietors of our creation. I consider their creation to have been an enormous error, which has not been attended by any benefit whatever; but having created them, and declared them to be proprietors, we gave them, I conceive, after the reservation of the Government revenue, all the rights of property that it was in our power to give, that is, all the rights that did not previously belong to others. We had no right to destroy the pre-existing property of others, in order to confer it on our new fangled proprietors; we could not legally or justly give them a single field which previously belonged to others; but we could and did give them the right of the Government in every field in their zamindari, and we superadded the full property in lands, not owned or occupied on a permanent tenure by others. Having done so, although we have a right, and are bound to protect the ancient cultivating proprietors and occupants in all their rights, whatever they were, and ought to be ashamed of ourselves for not having done so, we have no right to step in, between our proprietor and the cultivator of his own planting, on lands declared to be his own property, with a view to destroy the engagement which they have mutually entered into, and prescribe others of our own fashioning * * * * * * * *

I would let the regulation proprietor have all his just rights It could never have been intended when we created proprietors that they were to be merely entitled to a percentage on the revenue. It was meant that they should be really proprietors, which they are and ought to be, in every case in which that would not affect the previous rights of others, but as we had no power, that is, no lawful power, to take away the rights of others, we have not given them one jote of those rights, and are bound to maintain the ancient proprietors and holders of permanent rights against those of our own creation."

In a disputed legal question of this sort, it would have been well if the opinions of the High Court Justices, the Advocate General, and the other law officers of the Government, and some of the leading lawyers of the country, have been consulted. But in this matter, as in the matter of statistics, I find a remarkable want of information among the official papers that have been published. One of the zamindar's chief standpoints is the Permanent Settlement, and on this point it was most necessary that the Select Committee should have the best legal opinions procurable. No such opinions have, however, been consulted.

CHAPTER III. OF BILL—TENURE-HOLDERS.

Tenure-holders represent but one portion of the proprietary interest in land as distinguished from the raiyati interest. I do not see any special necessity for legislating on the present occasion for tenure-holders, properly so called. Their rights are pretty well ascertained, and as a class they at least are quite able to look after their own interests. I could understand the formal reproduction of the provisions of Act VIII of of 1869, B. C., with respect to tenures and under-tenures, but I fail to perceive sufficient reason or justification for changes in the substantive law in this respect. In my opinion, the whole of Chapter III should be recast, the provisions of Regulation VIII of 1819 retained in their integrity, and the relevant provisions of the Bengal Council Act VIII of 1869 simply reproduced.

The injustice of substantive changes is very much enhanced by the direct and indirect promotion of certain occupancy raiyats (*viz.*, those who sublet and those who possess more than 100 beghas) to the status of tenure-holders, as explained at length by my hon'ble colleague.

CHAPTER IV OF BILL—RAIYATS HOLDING AT FIXED RATES.

Whatever might have been the necessity felt by the zamindars for facilities in the collection of arrears of rent since the imposition of new Government cesses on lands, and however urgent the necessity felt by a certain class of landlords in Bengal proper for increased facilities as to enhancement of rent, I may say that the zamindars of Bengal and Behar are entirely at one that they would much rather put up with existing inconvenience and hardships, than accept the gift of the proposed legislation. If however the law is to be changed, it is but fair and just that the novel provisions of Act X of 1859, which are admitted by the highest authorities to have worked wrongful loss to the zamindars, should be modified or repealed. The presumption arising in the tenants' favour from 20 years' holding at an uniform rate of rent may be said now to have worked out its object, as every tenant who cared for it, has had an opportunity for the last 25 years to insist upon the granting of receipts and to take care for their preservation. Such being the case, apart from any other facts, it would have been proper to extend the period of uniform payment which should give rise to the presump-

Vide Section 3 and 4, Act X of 1859.

tion. But the necessity for such a change is rendered more urgent by the fact that in its existing shape it works positive and unmerited loss to the zamindar. The Hon'ble Rai Bahadur has in his dissent already called attention to the recorded opinions of the Hon'ble Mr. Reynolds in his memorandum, dated the 18th May, 1881. The same opinions have been recorded by Mr. Dampier, Senior Member of the Board of Revenue and President of the Rent Commission, in his note dated the 19th May, 1881, and although the Hon'ble Mr. Reynolds thought fit to change his mind, the arguments which were advanced by himself and by Mr. Dampier have not been refuted. Mr. Dampier condemns the retention of the presumption section not only on the ground already advanced by the Hon'ble Mr. Reynolds, that the real effect of such a statutory presumption has been not conservative but productive, creating "in the vast majority of instances new rights, instead of merely establishing those which already exist, but for the support of which full proof is not attainable," but also on the further ground of public policy that "the presumption amounts practically to a declaration that when an estate passes to a purchaser from a hostile vendor at a forced sale, in the majority of which cases, no zamindari papers are available to the purchaser, every tenant who has held without change of rents for 20 years shall acquire the right of permanent occupancy at a fixed rent." Mr. Dampier adds a further argument on the ground of public policy, that such a provision drives the landlords to institute enhancement suits every 20 years, "lest their rights should pass away *sub-silentis*."

Report of the Government of Bengal on the proposed amendment of the law of Landlord and Tenant in that Province, Vol. I, pp. 181-182.

Ditto, Vol. II, p. 460.

CHAPTER V. OF BILL—OCCUPANCY RAIYATS.

In approaching this subject we must bear in mind the great distinction between the actual cultivator and the middlemen. Whatever increased the prosperity of the agriculturist conduces to the prosperity of the nation, but the middleman whose prosperity is dependant on what he can squeeze out of the cultivator, is a useless member of society, who simply adds to the difficulties of the situation. Whatever tenderness is shown by the ancient custom of the country or the "official literature" of byegone generations, is limited to the cultivators of the soil and not to those who having gone into occupation of land for agricultural purposes, set themselves up as microscopic proprietors displaying within their limited spheres the quintessence of all the possible vices and abuses of the zamindari system. If there is to be a radical change in the law, this is a class of men who ought to be excised from our agricultural system, as they are the greatest hindrance towards the rise of that "substantial peasantry able to withstand the vicissitudes of seasons" which it is desired to bring into existence. I am quite willing to recognise the necessity of allowing the validity of sub-letting in certain special cases, but beyond that limit I would not go. In all cases where the occupation of land was allowed for agricultural purposes, I would insist upon the right of occupancy being made conditional upon the *bonafide* cultivation of the land by the tenant himself or by hired labour, and I would not allow the transfer to any other than a resident cultivator. Two of my amendments proposed in Committee embraced this question. The one allowing the sub-letting of an entire holding in case of females, minors, &c., was adopted, but the other which would restrict the transfer to *bonafide* resident cultivators was not carried.

It is a well established fact, that sub-letting has brought ruin upon the cultivator; and that middlemen have the most to answer with respect to the embarrassment of the agricultural situation, and that a raiyat holding direct under the zamindar is in a much better position than the *kurfa* or *kalait* raiyat. In the face of this, it is simply a wanton aggravation of existing difficulties to raise occupancy-raiyats *en masse* to the status of tenure-holders and rent-receivers, and to afford facilities to other than cultivators to acquire by occupation or otherwise the right of occupancy. Taking for granted that the raiyat requires protection from the arbitrary act of zamindars who purposely shift them from land to land to prevent their acquiring a right of occupancy in any one given bit of land (a practice which I contend has not been proved), the Select Committee would create a presumption in the raiyats' favour (*viz.*, that because they now hold land they *must* have held that land for 12 years) a presumption opposed in itself to the actual state of things in the agricultural population, as occupancy of land is daily changing owing to causes over which the zamindar has no control. This presumption ignores the circumstances that there are vast areas of riparian land in these provinces, which are constantly the subject of alluvion and diluvion; that throughout the border lands of these provinces there is still in force an active process of reclamation from jungle; that in the interior districts the pressure of population upon the soil has led and is daily leading to the encroachment of cultivation upon waste and pasture lands; that the existence is notorious of a large number of *paikasht* cultivators, who try their chances all round without being attached to any particular locality; and that there are numerous cases in which old raiyats voluntarily relinquish their jotes owing to a diminution of the productive qualities of the soil, and other sufficient reasons. Taking all these circumstances into consideration, can it be said that a fair and reasonable judge, in the absence of any other evidence whatsoever affecting the probabilities of the case, could, from the mere fact of a tenant's holding a plot of land to-day, deduce, or much less feel himself bound to deduce, that the same tenant must have occupied the whole or at least a part of the same plot for the last 12 years?

A good sample will be found at pp. VIII., IX, 355-60 of the first Vol. of an avowedly anti-zamindari compilation entitled "The zamindari Settlement of Bengal" quoting from various official and non-official utterances.

With reference to the proposed presumption that all raiyats have occupancy-rights, I would here cite a few instances where I think it will be simply impossible for the zamindar or thiccadar, though the raiyats have not got occupancy-rights, to rebut such a presumption.

1*st*.—In those cases where the landlord acquires possession by buying up the property at an enforced sale for Government revenue, the defaulting zamindar, whose property is thus bought up, is naturally in the majority of such cases hostile to the man who has bought it, and so refuses to give up the papers of past years. How is a zamindar in such cases to rebut the presumption?

2*nd*.—Where one estate is let out to two or more patnidars or thiccadars, how is a patnidar in such cases to rebut the presumption that the raiyat has not been holding lands in the other patni or thicca land of the estate?

This leads me to protest against the proposal to invest an occupancy-raiyat (though his holding may be only one yard in area) with occupancy-rights in all fresh lands he takes up, on the very same day that such lands are settled with him. Because a raiyat can cultivate a small piece of land, that is no reason why he should be able to cultivate large bits of land. He may take them simply to sub-let or sell it.

Then, too, the word 'estate' is most vague. An estate might mean a small bit of land, or it might mean large tracts of the country. The word 'village' would be more convenient. It has a well-defined boundary and it represents a specific area.

TRANSFER AND PRE-EMPTION OF OCCUPANCY-RIGHTS.

It is abundantly clear, that by the ancient land law of the country no raiyat, resident or non-resident, had the power to sell or mortgage his raiyati interest.* The Legislature and the Judges have respected this by holding that the right of occupancy is not transferable against the will of the landlord, except by custom. The contention on the part of the Government seems to be, that, as a matter of fact, the custom has grown everywhere, but the statistics to which appeal is made are not really to the point, as they do not show in how many cases the zamindar was a consenting party before or after the transfer.

* "It is generally understood, that the raiyats by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right *does not authorize them to sell or mortgage it.*"
Mr. Shore's Minute of 28th June, 1789; III, Harrington's Analysis, page 434.

A custom of this kind would be so notorious that there ought not to be the slightest difficulty in proving it in a Court of Justice to the satisfaction of all classes and interests and I maintain that the wholesale introduction of transferability is uncalled for in the absence (1st) of specific and proper evidence to show that it is universally recognized; and (2nd) of any particular instance of failure of justice in the Civil Courts from the inability of purchasers to establish a really existing and flourishing custom. Such a wholesale extension of occupancy rights, as is contemplated, must be detrimental to both proprietor and village community alike, as it takes from the former the power of keeping on his land those peaceful and friendly raiyats whom it is his interest to retain, and opens the door for them to be ousted by mahajans or hostile zamindars, who can buy up their rights, and settling a different class on their lands, bring quarrels, litigation and ruin into a village.

I would suggest that the old custom of the country, by which such holdings were not transferable, was one specially tending to the security and well being of the village community, as it prevented to a great extent those who had no interest in it forcing their way therein and by setting up interest opposed to those of the community at large, and of their proprietors, ruining the village peace and prosperity.

In support of this theory I would point to the disastrous consequence attendant on right of transfer having been recognized among the Dekkhan raiyats, and also to the disturbance among the Sonthals, due mainly to the oppression of the mahajans into whose hands they had fallen; and I desire to protest against the raiyats on my own and other zamindaries being as a natural result, if this Bill is passed, made over to the tender mercies of mahajans and other land speculators.

It is true that compensation for the introduction of the new right of transfer is offered to the proprietor in a proposed right of pre-emption, but why, I would ask, should the proprietor be forced to buy what is already his own? The proposed restricted right of pre-emption will be but small relief to the proprietor, and I would suggest that if allowed at all it should be made far more effective by its extension to every transfer of a raiyati right (except by way of inheritance), and if the same right could be extended to the case of "tenures" as well a self-acting machinery would be provided for the extinction of middlemen's interests, much to the good of all parties concerned. *I would much sooner prefer free sale to* bona-fide *resident cultivators*, than the right of sale to any one and every one, subject to a phantom right of pre-emption. It is supposed that the transferability of occupancy-rights would be of benefit to indigo planters in Bihar, but I know many such who are opposed to the proposal, and the Bengal planters as a class are entirely opposed to the same.

COMMUTATION OF RENTS.

In considering this question I would notice first, that Bhowli or rent payment in kind is not the custom in my own estates, nor do I consider that in those parts it would be as advantageous to either proprietor or cultivator as money payment of rent. But there are parts of Bihar peculiarly circumstanced, where Bhowli is the custom, and money payment the exception ; and suddenly to introduce so complete a change as is contemplated under this heading, would, I think, press very heavily on all classes. This is a matter which may fairly be left to time, the experience of past generation shewing that, with the gradual increase of prosperity and civilization, payments of rent in kind have a tendency to change into money payments, and I would deprecate such a change being suddenly forced on.

Personally this question does not much affect me ; but as the representative of the Bihar zamindars, I would here record their opinions, and that I think they are worthy of consideration.

The practice of paying rents in kind was no doubt the original method for paying rents, and its retention in parts of Bihar is due to its manifold advantages in the present condition of the people, as well as to the known desire of the people of this country to stick to old customs. Akbar's great Hindu financier Todur Mul had fixed the rent of the raiyat at ⅓ of the gross produce. Aurungzebe had increased this to ½ (one half); and the zamindars, taking into consideration the difficulty of the appraisement of the price of the straw, have fixed the share at 9-16ths (nine-sixteenths) of the produce of the crops, and giving to the raiyats the whole value of the straw.

Where the agricultural community has no other occupation to fall back upon, it is distinctly an advantage to the cultivator, that however small the produce of his field in a season of scarcity, he should retain a part of it; on the other hand, a tenant who is bound to pay a uniform money rent finds that in many cases the value of his whole crop is not equal to the landlord's fixed money demand. Viewed in this light, the cultivator who pays rent in kind is much better prepared to meet scarcity, than the tenant who pays money rent.

As an example of what I mean take a year in which crops have totally failed, the Bhowli-holder is liable for nothing to his landlord that year as he has no crop to share with him, but the money rent payer is liable for his full year's rent irrespective of the failure of his crop, and may be driven either to borrow at ruinous rates of interest at a time when his credit is peculiarly low, or to pay the costs and interest of a suit by the landlord. The provision for commutation of rents in kind is therefore held to be undesirable as rendering the agricultural population more liable to suffer in times of scarcity and famine.

Even in ordinary times (as the demand for rent generally coincides with the harvest), tenants paying rents in cash have in some cases, though the cases may be rare, to part with their grain at very low prices. The Bhowli tenant on the contrary, has no such sacrifice to make.

Then, again, in large tracts of alluvial formation, when a single season may make an immense difference in the productive qualities of the soil (either for good or for evil) zamindars and raiyats find the Bhowli system to be that most convenient and equitable for settling rents.

Further, in a Bhowli system of settlement, the landlord every year gets the benefit of sharing with the tenant any increase in the productive powers of the soil, or in the area, or in the value of the produce; and if there is any decrease, the loss is shared by both the parties. There is therefore much less cause for any of the parties to be dis-

contented, and then there is much less occasion for the landlords to institute suits for enhancement.

So much for the commutation itself. As to the manner of working it out, the revenue-officer is to be empowered to fix the money rents, and the Bill provides that in settling such rates he should be guided by the rate of money rents prevalent, in the neighbourhood, and the average value of the rent actually received by the landlord for the last 10 years. These rules are but vague; and as we know that, as a fact, different officers take very different views on all such matters, I do not think that a question of such vital importance should be left to a revenue-officer to decide according to his own individual opinion, and that such a matter is one that can only be decided satisfactorily by mutual agreement or private contract between the landlord and his tenant. It is also argued on the side of the zamindars that it is more profitable to the landlord to get the share of the produce in kind, than to get a money rent, because (unlike the raiyat) he can afford to keep back his grain from the market at harvest time, and sell it to better advantage at a time of the year when the price of the grains is dear. This commutation therefore would amount in practice to a reduction of the income of the zamindars, which I do not suppose is the real intention of the Government.

I hope shortly to send in some statistical information regarding this, which I have not as yet had time to complete. There is another point in connection with this which is worthy of notice in the raiyat's interest, *viz.*, that where the Bhowli system holds, the zamindar alone at his own cost keeps up the necessary dhoor bandhs for irrigation purposes, and no cost in connection with this, although they directly benefit by it, falls on the raiyats. Whereas where rent is payable in money, if the zamindar improves the productive powers of the land by irrigation works the raiyat is liable to have his rents enhanced, and according to local custom is expected to share the cost of keeping existing bandhs, &c., in repair with his zamindar.

ENHANCEMENT.

About this subject as, on the subject of realization of rents, it is thought advisable that the zamindars should get further facilities. The present law allows enhancement of the rate of rent through the Civil Court on three grounds only, the most important being, that the value of the produce, or of the productive power of the land, has been increased, otherwise than at the expense or by the agency of the raiyat, and everybody must admit that this principle is very fair, but it has been found in practice that it is most difficult to prove the "increase" in court of law, and so enhancement through the Law Courts is almost at a dead lock. The zamindar therefore finds it easier and less expensive to enhance his rents by private contract, but even this is by no means at all easy to accomplish owing to the unwillingness of the raiyats to pay any enhancement which they think is not obtainable through the Civil Court.

However, since Government has begun to publish the weekly price-lists of food crops in each district in the *Gazette*, we have better statistics to show the rise in prices I therefore consider the proposal to make these price-lists the conclusive evidence of a rise in the prices a very good one, and by doing this the zamindars will no doubt get a certain amount of relief. I would, however, propose that the general wording of the present law should be retained and that the ground of enhancement should not be restricted, as is now proposed.

There are cases where the value of lands improves through other causes than those contemplated in this Bill ; such cases might be rare and perhaps difficult to prove, but that is no reason why their existence should not be provided for.

The definition of "staple crops" in connection with enhancement, should not, I think, be limited to cheap food crops only.

All the old regulations are unanimous in declaring that the zamindars should enjoy the benefit of a change in the crops in the country. Sir John Shore mentions this to have been the custom before the Permanent Settlement. At the present time, too, not only the produce of the food crops but sugarcane, tobacco, betel, and various other crops also are appraised in those parts of the country where the rent is received in kind, and in the other districts we find a marked degree of difference in the rate of rents between those lands that grow cheap food crops and those that grow the more valuable crops.

This provision therefore is a "novel departure from the ancient law and the recognized customs of the country."

I see no necessity for any such additions being made to the old law which left it to the Court to give a "fair and equitable rate of rent" in all disputed cases, nor do I see the necessity for limiting the rate of enhancement. The enquiries which the Civil Court would have to make in each case would put that Court in the best position to know what rate of enhancement would be fair and equitable, and there seems no sufficient reason for curtailing its power, and preventing its giving a higher enhancement than 4 annas in the rupee, even though it might be satisfied that a higher rate would be fair and equitable.

As regards the private enhancements I fail to see the justice of doing away with free contract in this case. It is no easy thing for a landlord to get any enhancement by a private arrangement, and it is most undesirable that any loophole should be left for future dispute in such cases and that the raiyat should at the time of the registration of his kuboolyuts have the opportunity to contest his liability under the contract which he has already signed.

CHAPTER IX OF BILL—MANAGEMENT OF JOINT ESTATES.

I gather from paragraph 97 of the Statement of Objects and Reasons appended to the original Bill introduced in Council, and from the extracts referred to therein, that there exists an impression that the provisions for the appointment of managers for joint owners are much needed; and that the proposed legislation in that respect is necessitated by the repeal, in 1874, of certain portions of Regulation V of 1827, which has made the present law, Regulation V of 1812, Section 26, unworkable. The old Regulations gave the power to the Government to appoint managers for properties, where there are joint proprietors, and where the conduct of these joint proprietors caused an apprehension of a breach of the peace. These Regulations, however, were passed long before the enactment of the Criminal Procedure Code, according to which a breach of the peace was made a grave criminal offence. It was therefore found no longer necessary to make breach of the peace a civil as well as a criminal offence. The repeal of these Regulations in 1874 was therefore on the footing of obsolete enactments, and, consequently, there is every reason, before reviving such procedure, to enquire how far the Regulations of 1812 and 1827 were actually resorted to by public officers or private complainants, and with what success. I put a definite question to this effect in Committee, but the only reply I obtained was that the information would be looked

after; and to this day I have heard no more about it. In my humble opinion when such a law has solemnly been repealed as obsolete, the proposal for its revival ought to be preceded by the collection and publication of statistics. Neither theories nor mere general impressions should precede proposals for legislation. Facts, well established and clearly arranged, can alone justify them.

I cannot leave this subject without remarking that with the progress of education and the spread of levelling ideas a purely patriarchal form of Government is no longer needed for the benefit of the raiyats. If these provisions therefore are to be re-introduced, the proprietors of estates and tenures, and even the novel tenure-holders created by this Bill, could but view with dislike the proposal which leaves the entire management of their properties in the hands of the District Judge *without any right of appeal.* Is there less chance of a Judge giving a wrong decision in such cases that his order in them is to be final, or is the possible enquiry which may be caused by his order likely to be less than in the many other cases which as Judge he has to decide but in which the law refuses finality to his judgment, and provides for an appeal to the High Court?

While on this subject, I might mention that I proposed certain restrictions to be put on the management charges and powers of the managers; I further proposed that the management charges should, on no account, be more than 12 per cent. of the gross income of the estate; and that in making this suggestion I was justified by the fact that in some cases the management charges under Government in the Court of Wards has exceeded even 20 per cent. of the gross income.

"The rate varied from division to division, having been as high as 25 per cent. in Rajshahye and Cooch Behar(where a thorough reorganisation of the system of management is urgently called for, and is now in progress), and as low as 5·1 per cent. in Orissa."—(Administration Report of Bengal, 1879-80, pages 44 and 45.)

Besides this, I made a proposal to the effect that no managers should be appointed on the ground of breach of the peace, unless all or at least one of the proprietors apply for a manager. I made this proposal, as I thought that unless we put some restrictions of this sort we are bound to see all the raiyats apply for joint-managers in all 'ijmali' estates and in all cases where they have instituted criminal proceedings for breach of the peace, simply to annoy the zamindars, and have failed. The Criminal Code can more effectually treat this question than Civil Courts, as the power vested in the Criminal Courts for the prevention of breaches of the peace are much more effective than those with which the Civil Courts are now proposed to be vested.

There was a third proposal which I made to the Select Committee, which was, that the managers should on no account be allowed to have the power of lowering rents without the consent of all the joint proprietors. I naturally think (and I moreover believe that everybody who has studied the subject at all carefully, or has any experience in the management of landed estates, and is besides not committed to official opinions on the subject, will agree with me in thinking) that the manager, who after all has only a temporary interest in the village, and who is supervised by a Government officer, whose other duties do not allow of his giving sufficient time to such supervision, would, according to the proposed Bill, have splendid opportunities of robbing the zamindars of their yearly income by reducing the rents of the raiyats, and filling his own pocket by taking a commission from the said raiyats as bribe for such reduction. What is the class from which the Government can, in such cases, recruit their staff of managers? Looking to the pay of such appointments it can only be much the same class from which they now recruit their Ameens and Police Inspectors, who,

as is notorious, are one of the greatest curses of the country. The Government cannot possibly hope to recruit their managers from the higher class of native gentry, on account of the small salaries such appointments are likely to command. The incomes of the ordinary joint proprietors are, as a rule, very small; and moreover in these days of heavy criminal penalties for "breaches of the peace" it is not likely that Government will be able to appoint one manager for a large number of estates, and so, by ensuring his getting a sufficiently large amount of monthly salary, secure the appointment of a trustworthy man.

To all the proposals about restrictions on the power of the managers, and the expenses of their establishment (which, in the opinions of the zamindars, I have consulted, seems strictly necessary) I got the answer in Select Committee that the High Court are to be asked to frame rules. But we, the zamindars, maintain that the functions of the managers should not be left undefined, but that the legislature should clearly define them. If it is really thought the High Court knows more of this subject than the Legislative Council, then why is it that the High Court was not consulted on the very much more important questions concerning the legal rights of zamindars guaranteed to them by the Permanent Settlement?

CHAPTER XII OF BILL—RECORD OF RIGHTS.

It has been alleged that in some estates the zamindars do not keep up any proper records. If so, then in such zamindari survey and proper record of rights might be necessary; but this is no reason why in those estates where the records are perfect and where those concerned are contented with the records they have got, the raiyat and the zamindar should be put to the trouble of a survey.

All the zamindars measure their estates periodically according to the old system of measurement, and they have all some sort of rough measurement papers, and there are some who even go beyond this and have their estates not only measured but mapped out very much in the same way as is done in the estates of the Government. Their papers show the exact area and position of the raiyat's holdings, as well as the quality of the land and rates of rent payable.

There are a few zamindars who go even beyond this and induce all their raiyats to sign the record book after fully explaining to each of them the particulars of his field, &c. This is no easy task for the zamindar. He has not like the Settlement Officer of the Government in its khas mehals the power to compel the attendance of the raiyats, hence he has to incur a great deal of expense and the consequent trouble is immense.

Under these circumstances can it be said that it is necessary to have a general survey, at least those zamindars where the records are perfect should, I think, be exempted.

I propose that if there is to be a survey it should be taken in hand in only those villages where the raiyats or zamindars wish it, as I do not see the justice of saddling them with the expenses of a survey which they do not wish for, and which instead of doing good is calculated to give rise to endless litigation.

In 1876 a law was passed compelling the zamindars to register their rights. We all know the amount of litigation this gave rise to. People who had no claims whatever came forward in the hope of getting some sort of claim recognised, and the result is that though eight years have elapsed since this Act was passed, many of the cases under it are still undecided and many of the landlords who really have the best possible title to their properties, in addition to the attendant anxiety, have been unnecessarily put to a great deal of expense.

So much for the record of the rights of the zamindars who do not represent even one per cent. of the population.

If the period of eight years has been found insufficient to record the rights of such a small class of the people, will it not take ten times as long to record the rights of the tenants who represent nearly the whole population of Bengal and Bihar, and will not the litigation expense, worry, and agitation during this long period consequent on the necessary enquiries be injurious to all classes ?

These are reasons which lead me to think that it is unnecessary to introduce the survey in any village except where those concerned request the Government to do it.

RECORD OF ZEMINDARS—KHAMAR OR PRIVATE LANDS.

This subject has been dealt with so very ably in the dissent by my Hon'ble colleague Rai Kristo Das Pal Bahadur that I need not add anything more than that I fully agree with all he has said about it.

CHAPTER XIII OF BILL—DISTRAINT AND REALIZATION OF RENTS.

It has been admitted on all sides that the zemindars need some more speedy and certain means for realization of rent than they now enjoy, and that the present law is quite inoperative in those cases where all the tenants combine not to pay rents. Such a high authority as Sir James Caird recognises the difficulties of the zemindars in those estates where the " no rent" cry is once raised, and even in the Bengal Government's memorandum of January last, this difficulty is in a way admitted.

We zamindars had therefore naturally hoped that with this object we would be given some increased facilities for realization of rent. In this, however, we have been greatly disappointed, and this Bill, if passed as it now stands, would leave us in this respect in a worse position than we now are, as instead of providing a summary and inexpensive method for the collection of our legal rents, it practically does away with distraint, the one only sure, equitable, and inexpensive process now allowed to us.

The present law provides that in those cases where the raiyats fall into arrears the zamindar can by his own agency serve them with notices stating the particulars of their arrears and then at once distrain their crops. This is the only system possible in those parts of the country that lie on the frontier where a large portion of the tenants are not even British subjects, and therefore able to evade the jurisdiction of the British Civil Courts, and also in those vast tracts like the Cosi dearah in the Purneah District which are inhabited by a semi-nomadic class of tenants who seldom stop in the same locality for more than one harvest.

Even a day's delay in such cases is fatal. The crops, if the raiyats refuse to pay their rent, must be distrained as soon as they are ripe, and the raiyats should not have sufficient time to cut them without paying in their rents, as they leave the village for good directly they have gathered the harvest.

The Bill, however, proposes that in future the landlords must in every such case apply to the Civil Court, and that the crops should be only attached through that Court, thereby giving to the raiyat ample time to cut and carry off his crop before the Court officers can reach the spot to distrain it. Such a procedure not only throws extra and new costs on the zamindar on account of Court-fees and legal agency which must be employed, but it will result in the landlord having no power whatever to realise his rents from those semi-nomadic raiyats who leave the village directly after they have

cut their crops. His only remedy will now lie in a civil suit against a raiyat of whose whereabouts even he may be ignorant, and to execute a decree against whom, if he succeeds in obtaining one, will be almost impossible.

I would specially record that it appears to me to be very strange that a Bill, one of the avowed objects of which was to give to landlords what is admittedly so necessary, *viz.*, some increased facilities for the realisation of their rents, should leave the hands of the Select Committee in such a form that instead of doing this, it intensifies their present difficulties and deprives them of the little relief they now enjoy.

It is the proprietors who are responsible for payment of their share of the Government revenue, which they have to collect from their raiyats, and it is not the Government revenue only that they have to realise; they have also of late been made to collect from their raiyats their share of certain Government cesses, and if by sunset of the day fixed for payment of the Government revenue they have not paid in their Government dues, they are liable to be summarily sold up, and turned out of their properties, and yet they are not to be given any means by which they can ensure their raiyats paying to them what they are bound under such a heavy penalty to pay in to the Government to a day.

The practical working of the law as it now stands is this, that a proprietor may be sold up and ejected from his ancestral property owing to no fault of his own but to his inability to recover his legal rents from his raiyats, an inability due to a defect in our existing laws, a defect which, as I above show, the proposed Bill aggravates.

I do not for a moment wish to dispute the justice or necessity of the law that makes it possible for large estates to be sold up for trifling arrears of Government revenue, but what I do wish to point out is that it seems to zamindars a want of justice on the part of Government to reserve to itself this power of summary sale while it refuses any summary powers to the landlord for the collection of his rents from his raiyats.

The Government itself recognizes the inutility of trusting to the Civil Courts only for the realization of rents, by having peculiar laws of its own in its own estates or "Khas Mehals" and if necessary for Government, surely such rules are equally so for us. I do most earnestly hope that this matter will be seriously looked into before any final conclusion on it is arrived at, as it is one which gravely affects the majority of the Bihar zamindars.

CHAPTER XVII—FREEDOM OF CONTRACT.

I wish to enter my strong protest against the abolition of freedom of contract between zamindars and their raiyats and to the contemplated annulment of contract now existing, and entered into in confidence of the good faith of Government, by whom such contracts were specially legalised and thereby encouraged.

I would urge that no evidence has been shown of the alleged evils arising out of these contracts, or that zamindars have by an improper use of them, injured an unsuspecting peasantry; and that until the most conclusive proof can be given that such evils have become common, no such violent breach of existing arrangement fairly arrived at by mutual consent and sanctioned by Government should be allowed.

The proposed legislation on this point seems to start with the assumption that all contracts between a zamindar and raiyat must be prejudicial to the latter, an assumption utterly incorrect, as there are many cases in which a contract is directly to

the advantage of the raiyat who benefits by complying with his landlord's wishes, to such contracts there could be no possible objection, an yet these also will now be barred.

Finally, I would desire to record, that I object strongly to the conclusions of the Select Committee, because I am of opinion that I in such a momentous question, we have not had any sufficient data from which to form a fair judgment.

We should have had clear evidence given to us of the existence of those alleged causes, which not only necessitate so extreme a measure as a breach of Government guarantee and infringement of a proprietary right, but which call for a law avowedly so imperfect that the legal member of Government in introducing it has to admit that it is in itself likely to cause the extinction of the present class of cultivators for whose benefit it is specially passed; and to create in a few years a new class of cultivators unprotected by any law, and to leave the then Government of India to plunge the country once more into agitation and trouble in attempting to remedy the evils created by this Bill.

I would urge, that if a Bill is now necessary to define and regulate the relations of landlord and tenant, it should be conceived in such a spirit and so framed that instead of creating future difficulties, it should set this subject at rest for ever.

I am also of opinion, that it was impossible to give the proposed Bill proper consideration in Select Committee without evidence being taken on most of its points; and that this not having been done and proper statistical information not having been given to and tested by us, our deliberations were unsatisfactory, and that the results arrived at are based on very insufficient data.

DARBHANGA.

1st April 1884.

TRANSLATION OF THE FIRMAN.

Seal.

Be it known to all the amils of the present and future and to the jagirdars, karorious officers and Nazims of Sooba Bihar, that in accordance with the order of the Emperor who is universally obeyed, the long-standing zamindari of Pargana Dharmpur in Sirkar Monghyr and Dehat Pargana of Sirkar Tirhut belonging to the said Sooba Bihar, has been confirmed to Raja Madho Singh with appertaining rights, *viz.*, inam rasooms, &c. It is necessary that the officers and karpardazes of the Nizamat should recognize the aforesaid Raja (whose zemindari having descended to him by succession is declared as such)to be the permanent zemindar (subject to loyalty), keep him in possession of the zemindari rights, cause his all demands to be paid up, act according to his advice if the same be loyal and tending to benefit the raiyats. Further also, act in accordance with this Firman, which is high in dignity, they should strictly act up to the orders contained in the above Firman and refrain from calling upon the production of the renewed sanad annually.

Dated the 29th Shawal of the 42nd year of accession.